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No. 89-1561

JOSEPH F. SPANIOLO, JR.
CLERK

In the Supreme Court of the
United States

October Term, 1989

MARSHA CAMPBELL, Administratrix of the Estate of
MICHAEL CAMPBELL,

Petitioner

vs.

CITY OF PHILADELPHIA, SERGEANT WILLIAM SCHMID
and OFFICER WILLIAM CONAWAY,

Respondents

**BRIEF OF RESPONDENT, CITY OF PHILADELPHIA,
IN OPPOSITION TO A PETITION FOR
WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS**

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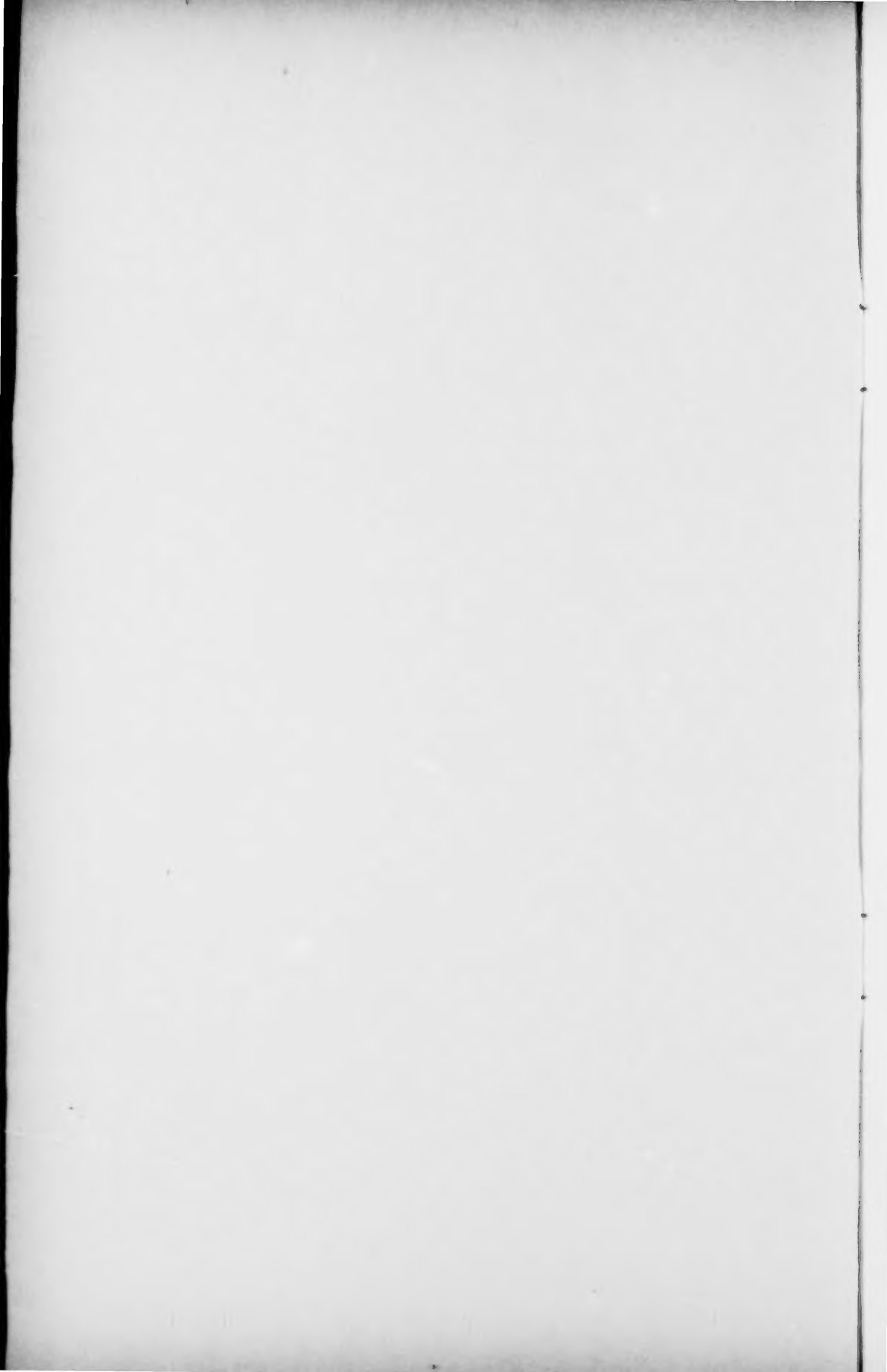
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Counter-Statement of the Question Presented for Review

COUNTER-STATEMENT OF THE QUESTION
PRESENTED FOR REVIEW

Where the motion for a directed verdict pursuant to Rule 50, after presentation of the plaintiff's evidence, stated that the plaintiff's claim (both Federal *and* State) failed for lack of any proof of a "particular vulnerability" to suicide on the part of the plaintiff's detainee-decedent, does the motion preserve the issue during trial and post-trial and permit the award of judgment notwithstanding the verdict to stand?

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TABLE OF AUTHORITIES

CASE:

Thezan v. Maritime Overseas Corp., 708 F.2d 175 (5th Cir. 1983), cert. denied 464 U.S. 1050 (1984) . . .	5
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RULE:

Fed. R.C.P. 50	i, 1, 3, 5
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OTHER AUTHORITY:

Restatement of the Law (Second) of Torts:

§314	4
§314A	2, 4

COUNTER-STATEMENT OF THE CASE

The plaintiff's decedent was detained by the Philadelphia police after an incident in which he stabbed another patron in a local bar room. Mr. Campbell was not intoxicated at the time and was quiet, cooperative and polite during his incarceration. There was no behavior in his past that could have forewarned his custodians that he had a particular vulnerability to suicide. Even plaintiff's own attorney agreed that "the police simply had no reasons in the world to think that Mr. Campbell was any particular suicide risk." (A. 196)

When the jury retired to the jury room after plaintiff's case rested, the City's attorney made a motion for a directed verdict, which, in pertinent part, stated the following:

... Pursuant to Rule 50, Your Honor, going to move for a directed verdict first, on all the Federal claims, specifically as to the suicide violating some Federal right. The *Colburn* case, which is cited in our trial brief and which is reported at 838 Fed. Second 663, very specifically states at 669 ... 'of course we agree that custodial officials cannot be placed in the position of guaranteeing that inmates will not commit suicide. On the other hand, if such officials know or should know,' and here's the key language, 'of the particular vulnerability to suicide of an inmate, then the 14th Amendment imposes on them an obligation not to act with reckless indifference to that vulnerability.' And here's where I think plaintiff's Federal claim totally fails. She has not shown any particular vulnerability on the part of Michael Campbell ... There is just no evidence whatsoever that this individual had a vulnerability to suicide.

• • •

Counter-Statement of the Case

I'd make the same motion as to the State negligence claims. Again, an element of a negligence claim is a known danger, notice of danger. And, again, here is no notice that there was anything about ...

The COURT: I agree. I think it is a very, very thin case, but I'm going to let it continue.

(A. 161-163).

After the City's case was presented, its counsel again argued for the dismissal of the cause of action. A portion of the argument was as follows:

And in our trial brief we cite the *Scarborough* case [a State case] that says you can't premise a negligence case on the violation of a directive alone. So I think her negligence claim has to fail, too, on that basis, plus again, in a negligence case you need some notice of any vulnerability to suicide. So I think Your Honor has to discuss the State claim.

(A. 214).

The City's brief in support of the post-trial motion quotes the Restatement of the Law (Second) of Torts at §314A (discussing "special relationships") as stating:

... The defendant is not required to take any action until he knows or has reason to know that *the plaintiff* is endangered or is ill, or injured—the very fact plaintiffs failed to prove. Moreover, Pennsylvania law imposes a higher standard than that set forth in Section 314A—it requires actual knowledge of the plaintiff's particular situation, *Melendez*.

(A. 217) (emphasis in original).

SUMMARY OF ARGUMENT

Plaintiff-petitioner misstates her question as presented to this court. The fatal defect in plaintiff's proof of knowledge of a special vulnerability to suicide on the part of her decedent was consistently preserved. Whatever "split" in the authorities in the various circuits she may discern on a question of preservation of issues under Rule 50 is irrelevant to this case.

ARGUMENT

The question as presented by the plaintiff claims that the directed verdict motion "waived" the ground that plaintiff's case was "fatally defective in the absence of certain specific proof". In fact, the directed verdict and the entire record show that the City repeatedly argued that a record devoid of specific proof of knowledge of a particular vulnerability to suicide on the part of the decedent was fatal to plaintiff's case.

Apparently, therefore, the plaintiff's actual argument is that phrases such as "an element of a negligence case is a known danger, notice of danger" are inadequate to inform the court and jury that a duty does not arise in a custodial situation to protect an individual from a danger until the custodian knows or has reason to know of the particular danger. This is hair-splitting; without duty, there can be no liability. "Duty" under the instant circumstances only arises (as was *repeatedly* argued) with *knowledge* of the particular vulnerability of the individual.

Plaintiff has misstated her own question of law. The fatal defect in her record *was* the focus of the City throughout and *was* preserved, both as the Federal *and* the State negligence issues. Plaintiff argues that the City asserted that "they did not owe Michael Campbell a duty to use reasonable care, or that the question whether there was a duty turned on the specific facts established by plaintiff." (p. 11) Of course the City never made such assertions. Under Restatement §314, there is ordinarily *no* duty of care to protect others, [upon non-supervisory persons] even *with* knowledge of a particular danger. Under Restatement §314A, [regarding "special relationships"], there is a duty upon a caretaker or supervisor to protect a custodial

person from specific dangers that the supervisor knows or has reason to know may threaten the particular individual. It would be strange indeed if the City argued that it "did not owe" its detainees *any* duty or disputed the fact that its duty "turned on specific facts" which had to be "established by the plaintiff".

The problem here is, merely, that plaintiff did *not* meet her burden of proof: knowledge of a particular vulnerability to suicide on the part of Mr. Campbell. This was a burden of proof that the City preserved throughout.

The purpose of a Rule 50 Motion for a directed verdict is "to apprise the trial court of the movant's position." *Thezan v. Maritime Overseas Corp.*, 708 F.2d 175, 179 n. 2 (5th Cir. 1983), *cert. denied* 464 U.S. 1050 (1984). "[T]echnical precision is not necessary in stating grounds for the motion," *id.* The City argued from first to last that the record was devoid of evidence that *anyone*—even decedent's family, and certainly not the police officers who had him in their charge—had the least notion that he presented a suicide risk. Further, the City argued that without knowledge or reason to know there was no case, in Federal or State law. The City request a directed verdict on those grounds after plaintiff's case. The City proposed jury instructions directing a verdict. The City requested J.N.O.V. promptly. The trial judge correctly granted that relief.

Conclusion

CONCLUSION

There is no merit to plaintiff's argument. Whatever "split" of authority she may discern among the Circuits involving a point of law based on the Federal Rules, it does not apply on these facts. The issue was preserved. It was decisive on the facts of record. The case was properly resolved and must be affirmed.

Respectfully submitted,
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